

IN THE HIGH COURT OF BOMBAY AT GOA

SECOND APPEAL NO. 107 OF 2005

SHRI SHIVA MOLU FOL DESSAI, REP. BY Appellant
HIS ATTORNEY SHRI SANTOSH SHIVA
FOL DESSAI, QUEPEM GOA.

Versus

SHRI PURNANAND SONUM Respondents
AUDI(SIN.DEC.) THROUGH LEGAL
REPRESENTATIVES

Mr. V.A.Lawande, Advocate for the Appellant Respondent No. 3 In
Person

Coram:- R.M.S. KHANDEPARKAR, J.

Date:- 3rd March, 2006

P.C.:

Heard.

The appellant seeks interference in the concurrent findings arrived at by the Courts below regarding failure on the part of the appellant to establish his claim to the property bearing Matriz No.120 on the following point stated to be arising as substantial question of law in the matter :-

" Whether the trial Court could have refused relief in favour of the Appellant by holding that the Appellant claims ownership of the entire property known as 'ZUNGENTILMOLL', in as much as the Appellant has categorically in the prayer clause claimed insertion of the name of the Appellant, to the extent of only half of the said property ? "

Apart from the fact that the trial Court had proceeded on the basis that the claim of the appellant relates to the entire property bearing Matriz No.120 inspite of the fact that only half of the said property is sought to

be claimed which would be sufficient to discard the analysis of the materials on record by the trial Court in relation to the claim by the appellant to the property in question. the following finding arrived at by the lower appellate court on detail analysis of the materials on record is sufficient to reject all the contentions on behalf of the appellant "-

" The plaintiff claims that his property bearing Land Registration No.4180 corresponds to matrix no.120. As far as this aspect is concerned, there is no sufficient material on record to accept his contention. First of all it is to be noted here that the boundaries disclosed in the matrix certificate were only of the portion for which the tax was assessed by the concerned authority which means that the portion which was actually giving profit to the owner of it was assessed for the purpose of collecting tax. Therefore the said boundaries disclosed in the matrix certificate cannot be considered as the correct boundaries of the entire property. The said matrix certificate has no presumptive value nor it could be considered as a title document or having any right over such property. The learned Trial Court has discussed at length the boundaries disclosed in both these documents however it is to be noted here that the right to any particular property could be ascertained only by a title document and not by any revenue records. The plaintiff in the present case was required to show first of all that his property which was purchased by him vide sale deed dated 3.1.1975 corresponds to either entire matrix no.120 or half of it. No expert has been examined in this regard who could have assisted the Court or the parties in better way to appreciate the case of the parties.

It is to be noted here that the earlier sale deeds of the Vendors of the plaintiff do not refer to any matrix records. For the first time the sale deed executed by the plaintiff on 3.1.1975 speaks about matrix no.120. The said PW.1 has produced the deed of sale during the cross-examination which have been marked as PW.1/D-1 and the translation of it shows that the sale deed was executed on 8.4.1925 in presence of the Notoary by the first party namely Rama Phal Dessai and his wife Mogre and others in favour of second party namely Sonu Sinay Audi wherein there is a

reference of the property known as Pimpola Mola described under no.4186. Similarly there is another sale deed produced at exhibit PW.1/D-2 which is dated 7.10.1891 executed between first parties Fotty Bencro Follo Dessay and his wife in favour of Xamba Sinay Laddo wherein there is a reference that the first party are owners and possessors of the entire property uncultivated land known as Zungueatil Mollo or Deulacodil Molla situated in village Bally and bounded on east by the paddy field Sord Chactam or Babu Follo and mason, on the west by the paddy field Govallo of Gonessa Putu Follo and others, sought by the paddy field Gonvol of the said Gonessa, Narana Follo and others, and on the north by the top of hill. The sale deed further refers that the first party wanted to sell and in fact sold without reservation to the said Xamba, the half of the said uncultivated property with the condition that the said Xamba should pay eight pies of quit rent relating to the same. Even though the sale deed disclosed about possession of the half share sold to the said Xamba Sinay Laddo, the boundaries of the said half have not been disclosed anywhere nor there is any reference to Matriz No.120. "

The above discussion and finding arrived at by the lower appellate Court is a complete answer to the contentions sought to be raised on behalf of the appellant. The appellant having failed to establish that the property which is stated to have been purchased by the appellant corresponds to either the entire property bearing Matriz No.120 or half of it and a clear finding having been arrived at on assessment of the evidence on record, the point which is sought to be raised as substantial question of law does not arise at all for consideration. As no other point has been shown as arising for consideration as substantial question of law, there is no case for interference in the matter in exercise of powers under Section 100 of C.P.C. and therefore the appeal fails and is rejected.

R.M.S. KHANDEPARKAR, J.